IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 866 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

S D RATHOD

Versus

DIRECTOR GOVT.PRINGING & STATIONERY

Appearance:

1. Special Civil Application No. 866 of 1994

MR RD RAVAL for Petitioner No. 1-10

MS. RITA CHANDARANA, AGP, for respondent No. 1

RULE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 17/06/2004

ORAL JUDGEMENT

S.D. Rathod and others, petitioners, have filed

this petition challenging the order dated 5.1.1994 passed by the Manager, Government Central Press, Gandhinagar, which is produced at annexure-E to the petition. As per the said order it is the case of the petitioners that the pay scale of the petitioners have been reduced. The original pay which petitioners were entitled on 1.1.1992 was Rs. 1200/- which has been reduced by the impugned order to Rs. 950/- and consequential loss also. On 1.1.1993 the basic pay of the petitioners was Rs. 1230/which has been reduced to Rs. 970/- and other consequential loss.

2. The facts giving rise to this petition are as under:

2.1 All the petitioners were working as Assistant binders at Government Photo Litho Press, Ahmedabad. This press is run under the control of the Director, Government Printing & Stationery, Dudheswar, Ahmedabad, respondent No. 1.

2.2 The petitioners were appointed as Assistant binders on 12.4.1982 except petitioner No. 5, who was appointed as such on 16.4.1982. Initially they were appointed at Government Photo Litho Press, Ahmedabad. They were given pay scale of Rs. 210-270. Thereafter, from 1.1.1986 the petitioners were put in the pay scale of Rs. 800-1150 and they were posted at Gandhinagar Press. At that point of time, the petitioners were getting Rs. 875/- as basic salary.

2.3 Thereafter, the petitioners were given benefit of higher pay scale from 1.4.1991 of Rs. 950-1500. This benefit was given because of completion of 9 years service. Copy of the order dated 9.12.1991 giving benefit of higher pay scale to one of the petitioners is annexed with the petition at annexure-B. At that time the basic pay of the petitioners was rs. 970/-.

2.4 From 1.1.1992 the revised pay scale came to be implemented and the petitioners were given the pay scale of Rs. 1200-1800. Copy of the said order dated 10.8.1992 is annexed at annexure-C to the petition. It is the case of the petitioners that they were already getting Rs. 1230/- as basic pay and the total salary was to the tune of Rs. 2809/-. The basic pay of Rs. 1230/- was inclusive of the increment of Rs. 30/- as on 1.1.1993.

2.5 It may be noted that during this time on 29.10.1988 the Government of Gujarat has decided to close

down "The Gurjar Laxmi" lottery. Therefore, the Department which was printing the lottery tickets was closed down and, therefore, the persons working in the department were made surplus. This Lottery Division was at Government Photo Litho Press, Ahmedabad. The Government thereafter passed order dated 2.1.1989 and all the petitioners were posted as Assistant binders at Government Central Press, Gandhinagar. Copy of the said order has been annexed with the petition at annexure-D.

3. In view of the aforesaid situation, the Government thereafter without hearing the petitioners passed order dated 5.1.1994 declaring that the petitioners are not entitled to higher pay scale and the higher pay scale given to them were cancelled. It is further stated that the petitioners are required to pay back the amount which the petitioners have received due to higher pay scale with effect from 1.1.1992. It is the case of the petitioners that the aforesaid order has been passed without hearing the petitioners.

4. Mr. R.D. Raval, learned advocate for the petitioners has reiterated the aforesaid contention before me. Ms. Rita Chandarana, learned AGP for the respondent has try to rely on the affidavit of V.H. Lachani, sr. Manager, Government Central Press, Gandhinagar dated 11.6.2001. In the said affidavit various contentions have been stated and some of the annexures have also been annexed with the reply. However, in paragraph 11 of the affidavit which is a reply to paragraph 9 of memo of the petition the deponent has stated that the order of cancellation of first higher grade pay scale is not cancelled as measure of punishment but right from issue of sanctioning first higher grade pay scale, sanction order itself was erroneous and was allowable to be cancelled on the date on which orders were issued and as such cancellation of order dated 5.1.1994 are legal and it cannot be cancelled and quashed and set aside. The petitioners have also raised several other question and the affidavit in reply has been filed by the respondent. However, Mr. Raval, learned advocate for the petitioners, has stated that if the petition has been allowed only on the ground that the impugned order has been passed without hearing the petitioners, the same will be in the interest of justice. He has further stated that if the impugned order goes and this Court directs the respondent to hear the petitioners, the petitioners can make detailed representation. He has stated that the Court may direct the respondent to issue a show cause notice to the petitioners as to why the pay scale of the petitioners will be reduced on the reasons

given in the show cause notice. If the said show cause notice is issued, the petitioners can file proper reply to the said show cause and thereafter after hearing the petitioners the Government may pass a reasoned order indicating various reasons in this regard.

5. I have considered the aforesaid submissions of the learned advocate for the petitioners and in my view once the order reducing the pay scale passed against the petitioners is without hearing the petitioners, it clearly prejudices the case of the petitioners and the same is liable to be quashed and set aside only on the ground that rule of natural justice has been violated. In view of the same, the order dated 5.1.1994 produced at annexure-E to the petition is quashed and set aside on the ground that the same is in violation of the principle of natural justice.

6. It is further directed that the Government may issue show cause notice to the petitioners, if they think fit, indicating the reasons and after receipt of the show cause notice, the it will be open for the petitioners to file reply, if any. Thereafter respondent No. 1 or the concerned officer will afford an opportunity of hearing to the petitioners and thereafter pass a reasoned order. It may be noted that during the pendency of the petition, the petitioners filed Civil Application No. 1867 of 2004 in which my learned brother Mr. Justice A.H. Mehta passed order on 21.4.2004. I have been informed that the said order has still not been implemented by the Government. The said benefit was not given to the petitioners because the petition was pending. It will be open for the respondents to implement the said order dated 21.4.2004 as per the time limit stipulated in the order. However, Mr. Raval, learned advocate for the petitioners states that if ultimately the Government decides against the petitioners then the petitioners undertake before this Court that whatever extra amount which the petitioners have received as per the order dated 21.4.2004, they will refund the said amount to the Government as per the modalities arrived at between the Government and the petitioners like the arrear will be adjusted with the other benefits available to the petitioners. It will be open for the Government to consider the request of the petitioners kindly and sympathetically. This contention of Mr. Raval, learned advocate, is without prejudice to the rights and contentions of the parties. It will be open for the petitioners to challenge the order of the Government if it goes against the petitioners before the appropriate forum as per the law.

7. I have allowed the petition only on the ground that rule of natural justice has been violated. This Court has not expressed any opinion on the merit of the matter. The Government has to decide the matter in accordance with law. Rule is made absolute to the aforesaid extent. No order as to costs.

(K.M. MEHTA, J)

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